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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN FRANCISCO DIVISION

CHERYL JOHNSON NEMES,	)	No. 07-4514 JSW
	)	
Plaintiff,	)	<b>[PROPOSED] ORDER GRANTING</b>
	)	<b>DEFENDANTS' MOTION TO</b>
v.	)	<b>DISMISS</b>
	)	
BENJAMIN F. PARKS, AND DOES 1	)	Date: November 30, 2007
TO 100,	)	Time: 9:00 a.m.
	)	Place: Courtroom 2, 17th Fl.
Defendants.	)	

This action having come regularly on for hearing before the Court on the motion of defendants to dismiss pursuant to F.R.C.P. 12(b)(1) and 12(b)(6), and the respective parties having been afforded an opportunity to be heard, the Court having considered the respective pleadings and the arguments thereon, and the entire matter having been duly submitted after the Court was fully advised thereon,

IT IS HEREBY ORDERED that the defendants' motion to dismiss is GRANTED based on the following reasons:

1. The Social Security Act ("the Act") provides the exclusive remedy for claimants who challenge a denial of social security benefits. 42 U.S.C. §§ 405(g)-(h). Because plaintiff's tort

1 and civil rights claims arise under the Act and plaintiff has filed to exhaust her administrative  
2 remedies under the Act, this Court lacks jurisdiction over the claims.

3 2. Plaintiff has also failed to exhaust her administrative remedies under the Federal Tort  
4 Claims Act; thus, the Court lacks jurisdiction over her tort claims.

5 3. Even if the Court could assert jurisdiction over plaintiff's claims, because the actions  
6 she complains of involve conduct by defendants in the performance of adjudicative duties, her  
7 claims are barred by judicial and quasi-judicial immunity.

8 4. Plaintiff's civil rights claim against the individually named defendants, Benjamin F.  
9 Parks and Levardis Smith, are dismissed because there is no *Bivens* remedy for alleged due  
10 process violations made in connection with the handing of a social security benefits claim.  
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12 DATED: \_\_\_\_\_

13 \_\_\_\_\_  
14 JEFFREY S. WHITE  
15 United States District Court Judge  
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